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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA
AT SAN JOSE

SAN JOSE POLICE OFFICERS'
ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSÉ, BOARD OF
ADMINISTRATION FOR POLICE AND FIRE
DEPARTMENT RETIREMENT PLAN OF
CITY OF SAN JOSE, and DOES 1-10,
inclusive,

Defendants.

Consolidated Case No. 1-12-CV-225926

*[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]*

ASSIGNED FOR ALL PURPOSES TO:
JUDGE PATRICIA LUCAS
DEPARTMENT 2

**AFSCME LOCAL 101'S REPLY
MEMORANDUM IN SUPPORT OF
MOTION FOR PAYMENT OF EXPENSES
OF PROOF UNDER CCP SECTION
2033.420**

AND RELATED CROSS-COMPLAINT AND
CONSOLIDATED ACTIONS

Hearing Date: September 25, 2014
Hearing Time: 9:00 a.m.
Courtroom: 2
Judge: Honorable Patricia Lucas
Action Filed: June 6, 2012
Trial Date: July 22, 2013

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I. INTRODUCTION

Defendant City of San José (“City”) attempts to defeat AFSCME’s Motion for Payment of Expenses of Proof (“Motion”) under Section 2033.420 of the Code of Civil Procedure (“section 2033.420”) by arguing that each Request for Admission (“RFA”) that is subject of this Motion is objectionable. These criticisms might have been appropriate were the City opposing a motion to compel further responses to the RFAs, but the time to object has long passed. Rather than seeking a protective order or simply posing its objections to the RFAs, the City unequivocally denied them, a fact it does not dispute in its opposition. Therefore, the City’s objections to the substance of AFSCME’s RFAs - such as its contention that some impermissibly pose questions of law and others are overbroad or general - are irrelevant to this motion and cannot defeat it. (*See AFSCME v. Metro Water Dist.* (2005) 126 Cal.App.4th 247.) The City is stuck with its denials and AFSCME should not be penalized for the City’s failure to follow proper procedure.

As AFSCME demonstrated in its opening brief, it is entitled to cost of proof sanctions because (1) Defendants unequivocally denied certain matters to which AFSCME sought admissions, (2) the admissions were of consequence, (3) AFSCME proved these matters, and (4) the City’s denials were unjustified. (Code Civ. Proc. § 2033.420.) As shown below, none of the City’s defenses change this outcome.¹

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II. ARGUMENT

A. The City Failed to Timely Object to the Subject RFAs and Cannot Assert Objections to Them Now

“When requests for admission have been made, the responding party may promptly move for a protective order.” (Code Civ. Proc. § 2033.080(a).) However, if a party does not move for a protective party, it must either provide an answer *or* object to the RFA’s substance, or partly object and answer the remainder. (Code Civ. Proc. §§ 2033.210(b), 2033.230(a) (“If only a part of a request for admission is objectionable, the remainder of the request shall be answered”).) Tellingly, the Legislature distinguished an “objection” from an “answer” with respect to RFAs.

¹ The City states, “The burden rests on the moving party to show that an RFA was unjustly denied.” (City’s Opp., p. 4:17-18.) However, the authorities to which it cites do not support this proposition.

1 A party that answers an RFA must provide an answer that is as “complete and straightforward
2 as the information reasonably available to the responding party permits.” (Code Civ. Proc.
3 § 2033.220(a).) If the party interposes a “denial” in its response, it must only “[d]eny so much of the
4 matter involved in the request as is *untrue*.” (Code Civ. Proc. § 2033.220(b)(2) (emphasis added).)
5 Nothing in the Code of Civil Procedure authorizes a party to deny an RFA solely based on objections;
6 therefore, it is assumed that a party that denies an RFA is denying the truth of the RFA and is not
7 posing an objection.

8 Nonetheless, the City argues that it denied the subject RFAs because they were allegedly
9 objectionable. If that was in fact the basis for the City’s denials, the denials were improper as they
10 did not address the truth of the matters requested admitted. Indeed, if the RFAs were truly improper,
11 the City had two choices: move for a protective order or object without answering. (Code Civ. Proc.
12 §§ 2033.080(a), 2033.210(b), 2033.230.) Resting on its objections would have shifted to AFSCME
13 the burden of motioning to compel a further response to those RFAs after meeting and conferring.

14 If many of the subject RFAs did in fact present pure questions of law², the City could have
15 objected on such grounds and allowed the court the opportunity to decide, on a motion to compel,
16 whether such an objection was valid. However, “when a party is served with a request for admission
17 concerning a legal question properly raised in the pleadings he cannot object simply by asserting that
18 the request calls for a conclusion of law.” The party must make the admission if it is able to do so or,
19 otherwise, “set forth in detail the reasons why he cannot truthfully admit or deny the request.” (*Burke*
20 *v. Sup.Ct.* (1969) 71 Cal.2d 276, 282 (citations omitted).) The City did not do so here.

21 Similarly, even if the City thought a particular RFA was too general or overbroad, it was
22 required to deny or “[a]dmit so much of the matter involved in the request as [wa]s true, either as
23 expressed in the request itself or as reasonably and clearly qualified by the responding party.” (Code
24 Civ. Proc. §§ 2033.220(b)(1), (2).)³ The City failed to do this and, instead, categorically denied the

25 ² That is not the case here, however, since AFSCME’s RFAs sought an admission of the application
26 of law to facts, which is an entirely proper form of RFA. (Code Civ. Proc. § 2033.010.)

27 ³ In fact, the first Instruction included in the RFAs, Set One refer to and specify the commands of
28 CCP section 2033.220: “(a) each answer in a response to requests for admission shall be as complete
and straightforward as the information reasonably available to the responding party permits, and (b)
each answer shall: admit so much of the matter involved in the request as it true, either as expressed
in the request itself or as reasonably and clearly qualified by the responding party; (2) deny so much

1 substance of the RFAs. With respect to the portion of the request it did not admit or deny, it was
2 obligated to object or specify that it “lack[ed] sufficient information or knowledge” to respond.
3 (Code Civ. Proc. §§ 2033.210(b), 2033.220(b)(3).)

4 For example, the City argues that RFA No. 18⁴ was overbroad because it contained a
5 “generalized statement that related to ‘all benefits owed by the System’ and not just to pension
6 unfunded liabilities. The court’s decision did not find that the City had been historically responsible
7 for all ‘shortfalls’.” (City’s Opp., p. 5:19-21.) In that instance, rather than interposing an unequivocal
8 denial, the City should have admitted the truth of the RFA only with respect to pension unfunded
9 liabilities and denied the rest. Again, with respect to RFA No. 3 (City’s Opp., p. 7:8-13), the City
10 could have admitted the truth of the matter solely with respect to pension benefits.⁵ Because
11 AFSCME ultimately proved these RFAs with respect to those particular retirement benefits, it is
12 entitled to recover fees for such proof.

13 Clearly the City had no good reason to respond with blanket denials of the RFAs, and
14 AFSCME is entitled to costs of proof as a result. The City argues that “AFSCME’s approach” would
15 lead to a situation where “any party could simply propound a broad Request asking the other to admit
16 liability, and later seek to recover fees if successful at trial.” This is not a valid concern, as a
17 responding party that objects without answering a truly improper RFA will not be making such an
18 admission and will likely prevail if a motion to compel is filed. Typically, objections are resolved
19 through the meet and confer process where the parties narrow, clarify or define the request so that it
20 is no longer objectionable. The City did not provide this opportunity, but denied the request outright.

21 If a responding party truly is liable but denies its liability, there is no reason the propounding
22 party should not be able to recover expenses expended in proving the matter; that is exactly what

23 of the matter involved in the matter as is untrue....” (Paterson Decl. iso opening brief related to cost
24 of proof motion, ¶ 12, Exh. A.)

25 ⁴ RFA No. 18 asks: “YOU ARE REQUESTED TO ADMIT that prior to Measure B, the City has
26 been responsible for ensuring payment of shortfalls between the System’s assets and the actuarially
determined liability for all benefits owed by the System.”

27 ⁵ RFA No. 3 asks: “YOU ARE REQUESTED TO ADMIT THAT San Jose employees’ right to the
28 benefits established under the System vested upon such employees’ commencing employment with
the City.”

1 section 2033.420 contemplates. An award of costs of proof in this instance is proper because the
2 intent of the statute is to foster efficiency, and ensure only essential disputes need to be put to trial.
3 Moreover, as noted by the court in *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, a responding party
4 can admit an RFA at any time before trial without fear of cost of proof sanctions. However, if it truly
5 doubted its liability and had reasonable grounds to believe it would prevail on the matter (Code Civ.
6 Proc. § 2033.420(b)(3)), it would not have to worry about sanctions.

7 The City also argues that AFSCME propounded more than thirty-five (35) RFAs without
8 attaching a declaration demonstrating necessity. This issue is also moot because, while the City
9 could have objected to the excess RFAs on the grounds that they exceeded the thirty-five request
10 limit and withheld a response to those ones, it failed to do so. (Code Civ. Proc. 2033.030(b); *see also*
11 Code Civ. Proc. § 2033.040(b) (responding can seek protective order “on the ground that the number
12 of requests for admission is unwarranted”).) Again, it unequivocally denied each request.

13 By failing to raise at the proper time the objections it now attempts to argue, the City waived
14 its right to dispute the substance of the RFAs and cannot defeat this motion by relying on post-trial
15 after-the-fact objections.⁶ Because the City contends it denied the RFAs in lieu of objecting, it is
16 clear that its denials were unreasonable and made in bad faith.

17 On the point of bad faith, the City does not correctly describe the holding in *Brooks v. Am.*
18 *Broadcasting Co.* (1986) 179 Cal.App.3d 500, 510-11, when it cites it for the proposition that “cost
19 of proof awards ... are only appropriate where a party makes a bad faith denial of an RFA.” *Brooks*
20 did not hold that sanctions were only appropriate when a denial was made in bad faith. Rather, in
21 discussing factors that might be considered when determining whether a party had “no good reason
22 for a denial.” It explicitly stated: “[W]e have not attempted to absolutely define and limit the factors
23 which may properly be considered by a trial court in applying the requirements of section 2034,

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26 ⁶ Furthermore, the City cannot rely on the objections within its meet and confer letter to justify its
27 denials for the further reason that the letter was not a verified response. RFAs require the responding
28 party to verify them, and an attorney verification does not suffice. (Code Civ. Proc. § 2033.210(a);
§ 2033.240(a), (b); *Steele v. Totah* (1986) 180 Cal.App.3d 545.) Therefore, it is not a given that the
City denied the RFAs for the reasons articulated in its meet and confer letter.

1 subdivision (c). Instead, we have attempted to set forth general rules and guidelines which should be
2 considered in exercising discretion under section 2034..." (*Id.* at 511.)

3 **B. AFSCME Proved the Truth of the RFAs at Trial**

4 The City incorrectly contends that AFSCME did not prove the truth of the matters requested
5 admitted by the RFAs. As demonstrated in AFSCME's opening brief in support of this motion, the
6 Court's decision demonstrates that those matters were conclusively established.

7 Contrary to the City's statements, AFSCME proved the effect of Measure B on City
8 employees' retirement benefits as well as the retirement benefits they enjoyed prior to Measure B at
9 trial. (*See, e.g.*, Tr.1, p. 104:24-105:6; Tr.2, pp. 346:26-347:5, 352:28-353:19; Tr.3 pp. 450:3-12, 24-
10 26, 515:9-17.) Insofar as AFSCME proved such matters by (along with the other plaintiffs)
11 ascertaining a stipulation at trial admitting the text of Measure B, the City's pre-Measure B municipal
12 code, and the pre-Measure B charter, that was also proper for sanctions purposes⁷, as courts grant cost
13 of proof sanctions when the parties stipulate at trial to a matter which a party previously denied.
14 (*Wagy v. Brown* (1994) 24 Cal.App.4th 1, 6; *see also Barnett v. Penske Truck Leasing* (2001) 90
15 Cal.App.4th 494 (party may also recover cost of proof sanctions for proving subject of denied request
16 through summary judgment proceedings).)⁸

17 The City also argues that AFSCME did not prove the truth of certain RFAs because the City
18 did not contest them at trial. In fact, binding precedent establishes that costs of proof should be
19 awarded precisely under this scenario, and courts grant sanctions in such situations. (*Wimberly v.*
20 *Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 637-38 (granting cost of proof sanctions to plaintiff
21 where defendant denied certain RFAs and failed to put on any evidence at trial disputing the matters

22 ⁷ At trial, AFSCME filed several requests for judicial notice asking, in relevant part, for judicial
23 notice of Measure B and various provisions of its Municipal Code. (Soroushian Decl., ¶ 4, Exh. 2;
24 RJN Exh. F.) On the first day of trial, AFSCME announced that it was hoping to reach a stipulation
25 with the City which would obviate the need for asking the Court to judicially notice those documents.
26 (Tr. 1, p. 15:8-18.) AFSCME then agreed to withdraw its second request for judicial notice, which
included these items. (Tr. 2, p. 187:3-7.) However, the City failed to stipulate to said documents
during the course of the trial and not until after evidence closed on July 26, 2013; with the Court
accepting the stipulation on July 29, 2013. (Soroushian Decl., ¶ 5, Exh. 3; RJN Exh. D.)

27 ⁸ As such, the City's citations to *Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 865 and *Wagy v. Brown*
28 (1994) 24 Cal.App.4th 1, 6 (City's Opp., p. 4:27-5:3) is unavailing, as those cases involved situations
where the proof was not submitted at trial.

1 requested) (hereinafter “*Wimberly*”); *see also Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724
2 (granting cost of proof sanctions against party who denied RFAs but submitted evidence at trial
3 demonstrating the truth of the facts with respect to which the defendant sought admissions)
4 (hereinafter “*Garcia*”).) On this subject, one Court of Appeal noted:

5 Where certain facts exist which the responding party does not intend to
6 contest at trial, the proper time to admit and permit those facts to be
7 established is during pretrial discovery. In the event, however, that the
8 defendant denies a request for admission submitted by the plaintiff, he cannot
9 be forced to admit the fact prior to trial despite its obvious truth.

10 (*Smith v. Circle P Ranch Co.* (1978) 87 Cal.App.3d 267, 273.) This is precisely the reason why
11 section 2033.420 permits a party to recover costs incurred proving a fact that the opposing party
12 failed to admit in requests for admissions. (*Wimberly, supra*, 56 Cal.App.4th at 634.)

13 Such considerations are present here. Upon the City’s unequivocal denial of the subject RFAs,
14 AFSCME was stuck with those denials despite their falsity. Regardless of whether the City actively
15 contested a particular issue, as a result of the City’s denials, AFSCME had to rebut the denials and
16 establish each element to prove its case (as well as produce facts to rebut the City’s motion for
17 summary judgment). For example, because the City failed to admit to the pre-Measure B retirement
18 benefits - a relatively non-controversial proposition - AFSCME had to put evidence of the those
19 benefits into the record.

20 The City also avers this motion fails with respect to the RFAs relevant to the VEP because the
21 Court’s decision did not recognize that the VEP violated vested rights. However, the Court’s
22 Judgment explicitly struck that section down as an unconstitutional impairment of contract (page 4, ¶
23 4.) It is unclear how the VEP could have impaired the City’s obligation of contract if its members
24 did not enjoy vested rights to certain benefits detrimentally affected. Therefore, AFSCME should
25 recover for costs expended proving those RFAs designed to ascertain the level of pension benefits
26 available to City employees prior to Measure B.

27 **C. The City’s Defenses Are Without Merit**

28 **1. The Admissions Sought Were of Substantial Importance**

Contrary to the City’s contention, it was necessary and essential for AFSCME to prove the
truth of the RFAs subject to this motion in order to prevail in its action. In order to demonstrate an

1 impairment of contract, AFSCME had to establish - among other matters - that its members and
2 retirees enjoyed vested right in the retirement benefits that Measure B affected, and that Measure B
3 detrimentally altered and impaired those vested rights. As discussed more thoroughly in AFSCME's
4 opening brief to this motion, the subject RFAs addressed precisely those issues.

5 Rather than refute AFSCME's contentions, the City claims without citation to supporting
6 authority that its defense to paying costs of proof applies because (1) "the admissions sought were
7 general and not tied to the specific sections of Measure B that the court found to be invalid" and (2)
8 "they involved matters that were not contested at trial." (City's Opp., p. 7:26-28.) The second
9 contention was refuted in the previous section; as to the first point, the RFAs would only be too
10 general if they were objectionably overbroad, and the City did not make that objection. Rather the
11 City unequivocally denied all of them. It is illogical that the purported generality of the RFAs could
12 render them "of no substantial importance."

13 2. The City Lacked a Reasonable Ground to Believe It Would Prevail on the Denied
14 Matters

15 Without citing any authority that conclusively supports its proposition, the City avers that the
16 "threshold for a good-faith belief is low." (City's Opp., p. 8:9-10.) However, even if that proposition
17 were true, the City still fails to meet that low threshold or to provide its belief and reasons for
18 denying - rather than objecting to - the subject RFAs. For that reason it fails to oppose the motion.

19 The court's Statement of Decision demonstrates that the City's arguments lacked any
20 reasonable basis, although the Court may not have used those precise terms. As more thoroughly
21 discussed in AFSCME's opening brief, the court found that the City's arguments based on the
22 reservation of rights clause and in support of the three unconstitutional provisions of Measure B
23 either misrepresented Measure B, mischaracterized legal precedent, or were completely unsupported
24 by law. For example, in its discussion of Section 1506-A, the court noted that the City "*conceded*
25 that it had no authority for [its] novel interpretation of the 'comparable new advantage' doctrine" and
26 that, in its post-trial brief and argument, it "rephrase[d] the doctrine, in imprecise language...."
27 (Statement of Decision, p. 16:15-23 ("This distorts the 'comparable new advantage' doctrine, and
28

1 misreads *Claypool*.”) (emphasis added).) Given the City’s concession and the court’s finding, the
2 City had no “good-faith” belief that it would prevail on the matter.

3 Finally, the City’s attempt to distinguish *Wimberly*, *supra*, 56 Cal.App.4th at 618, is to no
4 avail as it does not stand for the proposition for which it is cited, *i.e.*, that it “explicitly limits awards
5 under Section 2033.420 to instances where a party fails to conduct a ‘reasonable investigation to
6 ascertain the facts.’” (City’s Opp., p. 8:22-26 (emphasis deleted).) There exists no such limitation.
7 Rather, the case noted that “since requests for admissions are not limited to matters within personal
8 knowledge of the responding party, that party has a duty to make a reasonable investigation of the
9 facts before answering items which do not fall within his personal knowledge.” (*Wimberly*, *supra*, 56
10 Cal.App.4t at 634.) As such, it reiterated a responding party’s duty to go above and beyond his/her
11 immediate knowledge and to inquire into the truth of the matter requested within reason. Yet the
12 City has presented no evidence that it made such an effort; rather, it simply allowed its attorneys to
13 deny the RFAs instead of objecting to them. It is clear that the City *did not* conduct even a cursory
14 investigation into the matters for which admissions were requested and robotically denied the
15 requests because it believed they were objectionable (not because they were untrue). With respect to
16 those RFAs which requested admissions as to the level of pre-Measure B retirement benefits and the
17 effect of Measure B on those benefits, the City had the tools at its disposal to respond but apparently
18 failed to consult them. As such, this exception does not save the City from sanctions.

19 3. There Was No Good Reason for Denying the Requests for Admission

20 The City claims that it had good reason for denying certain RFAs because they “went to
21 questions of law, not fact, and were not sufficiently tied to the case.” Again, these are not good
22 reasons to *deny* an RFA, as a denial essentially rejects the truth of a proposition “that is in
23 controversy between the parties.” (Code Civ. Proc. § 2033.110; *and see* 2033.220(b)(2)[“Each
24 answer shall: ... Deny so much of the matter involved in the request as is untrue.”].) Clearly the
25 RFAs pertained to matters “in controversy,” and if they were not “in controversy,” the City should
26 have either admitted them as non-controversial (or objected on that basis). The City’s argument that
27 RFAs need be “sufficiently tied to the case” is an invention tethered neither to statute nor case law.
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1 Because the City denied the RFAs for reasons other than their lack of truth, it is clear that it
2 had no good reason to deny them and sanctions are properly awarded here. (*Allen v. Pitchess* (1973)
3 36 Cal.App.3d 321, 332 (false responses constitute “bad faith” in responding to discovery).)

4 The City also avers in a rather conclusory fashion that a party may only recover costs of proof
5 expended in proving “certain facts.” However, the text of section 2033.420(a) does not support such
6 a narrow reading. Rather, the statute permits one to recover when it proves the truth of “any matter,”
7 and “‘any’ is defined to mean ‘of whatever kind’ or ‘without restriction’.” (*Zabrucky v. McAdams*
8 (2005) 129 Cal.App.4th 618, 628). In fact, a previous version of section 2033.420 *did* specify that
9 the matter proved had to be one of fact, but the reference to “fact” was removed. (*Smith v. Circle P*
10 *Ranch Co.* (1978) 87 Cal.App.3d 267, 273 (quoting and comparing former section 2034(c).) That
11 section 2033.420(a) does not include the same qualification to the phrase “any matter” that the former
12 rule included is conclusive proof that the City’s contention is incorrect. (*Kaiser Steel Corp. v. County*
13 *of Solano* (1979) 90 Cal.App.3d 662, 667 (“Where the Legislature omits a particular provision in a
14 later enactment related to the same subject matter, such deliberate omission indicates a different
15 intention which may not be supplanted in the process of judicial construction.”).) Further, although
16 section 2033.420 does not use the word “fact,” other sections of the Code of Civil Procedure
17 governing RFAs do. The omission of the term from section 2033.420 demonstrates that the
18 Legislature intended a different meaning in that section. (*See Briggs v. Eden Council for Hope &*
19 *Opportunity* (1999) 19 Cal.4th 1106, 1117; *Ferguson v. Workers' Comp. Appeals Bd.* (1995) 33
20 Cal.App.4th 1613, 1621 (“[I]f the Legislature carefully employs a term in one statute and deletes it
21 from another, it must be presumed to have acted deliberately.”); *McAllister v. California Coastal*
22 *Com’n* (2008) 169 Cal.App.4th 912, 946.) This makes sense, given the fact that “requests for
23 admissions are more closely akin to summary-adjudication procedures than to orthodox discovery,
24 being designed not so much to ‘discover’ the facts and to expedite trial preparation as to render it
25 unnecessary to try an otherwise triable issue of fact or law....” (*Hansen v. Superior Court* (1983) 149
26 Cal.App.3d 823, 828 (emphasis added).) Furthermore, an appellate court previously rejected the
27 contention that a RFA that called for a legal conclusion fell outside of the permissible scope of
28 recovery of the cost of proof sanctions statute. (*Garcia, supra*, 28 Cal.App.4th at 735.)

1 Finally, the City departs from the bounds of appropriate analysis by arguing that sanctions are
2 not mandatory here because its responses to AFSCME's RFAs were not "obviously false" or
3 "deceptive." (City's Opp., p. 10:7-14 (citing *Rosales v. Thermex-Thermatron* (1998) 67 Cal.App.4th
4 187, 198 ("*Rosales*").) First, it appears as though the City's responses were untrue, as its opposition
5 avers that it only denied the requests because they were objectionable; again, this is not a valid reason
6 for denying a request. Also, "obviously falsity" or "deception" is not a condition for sanctions;
7 *Rosales* appears factually to lie on the extreme end of conduct warranting sanctions, but it did not set
8 the standard. For example, the court in *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618
9 awarded costs without a finding that defendant's responses were "obviously false" or "deceptive."
10 Rather, sanctions were proper where the defendant failed to furnish any evidence on the contested
11 issue due to its attorney's mistake in understanding of the law pertaining to expert witness testimony.

12 **D. The Parties' Stipulation Prevents the City From Raising Objections to Amount of Fees**
13 **Sought**

14 The parties' recently reached a stipulation, which the court approved, agreeing to parse the
15 fees' motions into two phases, entitlement to fees and, then, amount. (Soroushian Decl., ¶ 2, Exh. 1.)
16 Because the final section of the City's opposition (Section E, pp. 10:19-11:7) relates to the second
17 phase, its arguments within are improperly raised here and should not be considered. In any event,
18 the City's attempt to limit *Akin v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127 to the
19 particular statute at issue in that case is unavailing, as other courts have considered the principle for
20 which it was cited in the context of other fee statutes. (See, e.g., *Brown Bark III, L.P. v. Haver* (2013)
21 219 Cal.App.4th 809; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140.) The City
22 points to no valid reason why it should not apply here.

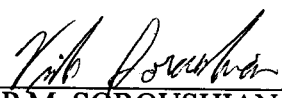
23 **III. CONCLUSION**

24 The motion should be granted for the reasons set forth in this reply and opening brief.

25 Dated: September 18, 2014

BEESON, TAYER & BODINE, APC

27 By:


VISHTASP M. SOROUSHIAN

Attorneys for AFSCME LOCAL 101

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PROOF OF SERVICE

SANTA CLARA SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

**AFSCME LOCAL 101'S REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR PAYMENT OF EXPENSES OF PROOF
UNDER Code Civ. Proc. SECTION 2033.420**

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, September 18, 2014.



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